

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
IN RE TREMONT SECURITIES LAW,  
STATE LAW AND INSURANCE  
LITIGATION

x Master File No.:  
: 08 Civ 11117 (TPG)  
:  
: STIPULATION AND  
: [PROPOSED] ORDER OF  
: VOLUNTARY DISMISSAL  
x WITHOUT PREJUDICE OF THE  
: BNY MELLON DEFENDANTS

-----  
This Document Relates to: State Law Actions  
08 Civ. 11183 (TPG)

: Electronically Filed  
x

-----  
**WHEREAS**, Plaintiffs Eastham Capital Appreciation Fund LP, NVP Positive Corp., John Dennis, Daniel Jackson, Laborers Pension Plan 17 and Richard Peshkin (collectively, "Derivative Plaintiffs" or "Plaintiffs") filed a First Consolidated and Amended Class Action and Verified Derivative Complaint herein on April 20, 2009 (the "Complaint");

**WHEREAS**, the Complaint asserts two claims against Defendant The Bank of New York Mellon Corporation and Defendant BNY Alternative Investment Services, Inc. (now dissolved) (collectively, "BNY MELLON"). The first claim is against BNY MELLON for breach of fiduciary duty as an administrator of the Rye Funds (Count VI), and the second claim is for malpractice and professional negligence (Count XII);

**WHEREAS**, BNY MELLON has not yet filed an answer to the Complaint or a motion for summary judgment;

**WHEREAS**, BNY MELLON filed a motion to dismiss the Complaint on May 20, 2009, which motion is pending (BNY MELLON's "Motion to Dismiss");

**WHEREAS**, in its Motion to Dismiss BNY MELLON asserts that BNY MELLON was merely a fund administrator for defendant Tremont Partners, Inc. preparing financial statements based upon documents which Tremont or its prime broker provided; that BNY MELLON was

not granted independent access to the source of that information; that BNY MELLON was permitted only to work with the documents as provided; that BNY MELLON did not provide investment advice and was not privy to the strategy under which the investments were made; and that BNY MELLON only provided non-discretionary, administrative, and ministerial services to funds managed by defendant Tremont Partners, Inc.;

**WHEREAS**, concurrently with this Stipulation, Plaintiffs and BNY MELLON entered into a tolling agreement (the "Tolling Agreement") (attached as Exhibit A hereto);

**WHEREAS**, in light of the assertions made and documents provided by BNY MELLON in connection with its Motion to Dismiss, and consistent with the Tolling Agreement, Plaintiffs are willing to make the stipulations and agreements described herein;

**WHEREAS**, Plaintiffs and BNY MELLON are entering into this stipulation to provide for a voluntary dismissal without prejudice, subject to tolling; this stipulation is not part of a settlement; and

**WHEREAS**, Plaintiffs have not previously dismissed an action against BNY MELLON based on or including the same claims as Plaintiffs have asserted against BNY MELLON in this action.

**NOW THEREFORE**, it is stipulated that this action and the complaint herein as against BNY MELLON should be and hereby is voluntarily dismissed without prejudice, with Plaintiffs and BNY MELLON to bear their own costs and disbursements. Nothing in this Order or in the underlying stipulation shall be construed as an admission or denial as to the merits of any of the claims against BNY MELLON or the merits of any of BNY MELLON's defenses to any of the claims in the State Law Actions.

Dated: New York, New York  
December 4, 2009

HAGENS BERMAN SOBOLO SHAPIRO LLP

By: 

Reed Kathrein  
reed@hbsslaw.com  
715 Hearst Avenue, Suite 202  
Berkeley, California 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
Admitted Pro Hac Vice

Co-Lead Counsel for Plaintiffs

CLEARY GOTTlieb STEEN &  
HAMILTON LLP

By: 

Jeffrey A. Rosenthal  
A Member of the Firm

One Liberty Plaza  
New York, New York 10006  
Telephone: (212) 225-2000  
Facsimile: (212) 225-3999  
jrosenthal@cgsh.com

Attorneys for The Bank of New York Mellon  
Corporation and on behalf of the dissolved  
entity BNY Alternative Investment Services,  
Inc.

**IT IS SO ORDERED**

Dated: \_\_\_\_\_, 2009

\_\_\_\_\_  
U.S.D.J.